



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Homar G. Hernandez

AUG 08 2017

San Antonio, TX 78264

RE: MUR 7156
Hurd for Congress
and Bradley T. Crate, as Treasurer
The Honorable William Hurd

Dear Mr. Hernandez:

The Federal Election Commission reviewed the allegations in your complaint received on October 20, 2016, and the supplement received on November 4, 2016. On July 19, 2017, based upon the information provided in the complaint, and information provided by the respondents, the Commission decided to exercise its prosecutorial discretion to dismiss the allegations and close its file in this matter. Accordingly, the Commission closed its file in this matter on July 19, 2017.

Documents related to the case will be placed on the public record within 30 days. See Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66132 (Dec. 14, 2009). A copy of the General Counsel's Report is enclosed for your information.

The Federal Election Campaign Act of 1971, as amended, allows a complainant to seek judicial review of the Commission's dismissal of this action. See 52 U.S.C. § 30109(a)(8).

Sincerely,

Lisa J. Stevenson
Acting General Counsel


BY: Jeff S. Jordan
Assistant General Counsel
Complaints Examination and
Legal Administration

Enclosure
General Counsel's Report

1-NOV-2017 10:44:00 AM

BEFORE THE FEDERAL ELECTION COMMISSION
ENFORCEMENT PRIORITY SYSTEM
DISMISSAL REPORT

MUR: 7156

Complaint Receipt Dates: October 20, 2016
November 4, 2016¹

Response Date: December 8, 2016

Respondents: Will Hurd for Congress,
and Bradley T. Crate, as treasurer
(collectively the "Committee")
William Hurd

EPS Rating:

**Alleged Statutory/
Regulatory Violations:**

**52 U.S.C. §§ 30120(a)(1), (d)(1)(B)
11 C.F.R. §§ 110.11(b)(1), (c)(3)(ii), (iii)**

The Complaint and a Supplement allege that Hurd and the Committee violated the Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission regulations when the Committee paid for two television ads that contained written disclaimers that were not clearly readable.² The Complaint also alleges that in one of the two ads, the candidate's image was missing during his audio statement of approval.

Respondents deny the allegations and assert that the Complaint relies on an inaccurate version of one of the ads; that version displays a blank, black screen during the candidate's statement of approval. The Response links to what it maintains is the accurate version of the ad.³ In that version, the candidate's image is visible; however, the written disclaimer first appears in white text against a colored background and then part of the background changes to white, which makes some of the white text difficult to read. See 11 C.F.R. § 110.11(c)(3)(iii)(C) ("[t]he

¹ The Respondents only responded to the original Complaint, which alleged that one of Hurd's ads contained an improper disclaimer and was missing an image of the candidate. The Supplement alleged that a second ad included an improper disclaimer.

² The Complaint and Supplement state that the ads aired on television, and include internet links to the ads. See http://mycmag.kantarmediانا.com/KMcmagvidbin2/HOUSE_TX23_HURD_DARKEST_CORNERS.html; http://mycmag.kantarmediانا.com/KMcmagvidbin2/HOUSE_TX23_HURD_GREATEST_HONOR.html.

³ See <http://admo.advertisinganalyticsllc.com/tve/#viewer/13c19506-0bfc-4ec1-9f4e-4a1d582c329f>. The Committee did not file a separate response to the Supplement, and did not address the second ad.

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statement must appear with a reasonable degree of color contrast between the background and the text of the statement.”). Similarly, in the second ad, a light-colored background again makes some of disclaimer’s white text difficult to read. Respondents did not respond to the Supplement.

Based on its experience and expertise, the Commission has established an Enforcement Priority System using formal, pre-determined scoring criteria to allocate agency resources and assess whether particular matters warrant further administrative enforcement proceedings. These criteria include (1) the gravity of the alleged violation, taking into account both the type of activity and the amount in violation; (2) the apparent impact the alleged violation may have had on the electoral process; (3) the complexity of the legal issues raised in the matter; and (4) recent trends in potential violations and other developments in the law. This matter is rated as low priority for Commission action after application of these pre-established criteria. Given that low rating, the technical nature of the alleged violations, the likelihood that the general public would have not have been confused as to who sponsored and paid for the ads, we recommend that the Commission dismiss the allegations consistent with the Commission’s prosecutorial discretion to determine the proper ordering of its priorities and use of agency resources. *Heckler v. Chaney*, 470 U.S. 821, 831-32 (1985). We also recommend that the Commission close the file as to all Respondents and send the appropriate letters.

INFORMATION

